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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	:	Chapter 11
SEARS HOLDING CORPORATION,	:	Case No. 18-23538 (RDD)
	:	(Joint Administration)
Debtors	:	

**OBJECTION OF TUTU PARK LIMITED (STORE No. 3829) TO DEBTORS' NOTICE
OF CURE COSTS AND POTENTIAL ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND RESERVATION OF
RIGHTS**

Tutu Park Limited (“TPL”) by and through its attorneys Dudley Rich LLP, as and for its Cure Objection to the “Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Leases in Connection with Global Sale Transaction (the “Cure Notice”) (ECF 1731) filed by the above-captioned debtors and debtors in possession (the “Debtors”) represents as follows:

1. On or about October 15, 2018, the Debtors, including Kmart Corporation (“Kmart”) filed petitions under Chapter 11 of Title 11 of the United States Code (“the Bankruptcy Code”). The Debtors have continued to operate their business and manage their properties as debtors in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

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2. TPL is the Landlord and Kmart is the Tenant pursuant to that certain unexpired Lease dated as of November 14, 1989, as amended, on January 15, 1992 (the “First Amendment”) as further amended on July 31, 2000 (the “Second Amendment”) (together “the Lease”) for the premises known as the Kmart store unit located at Tutu Park Mall, in St. Thomas, Virgin Islands. *See*, Premises, Exhibit B, First Amendment at ¶ 1.B.
3. Attached hereto as Exhibit A is a copy of the Lease dated November 14, 1989.
4. Attached hereto as Exhibit B is a copy of the First Amendment.
5. Attached hereto as Exhibit C is a copy of the Second Amendment.
6. On or about January 18, 2019, the Debtor served the Cure Notice, which provides at Schedule B, No. 219, Store 3829, that the estimated cure amount due to TPL under the Lease is \$126,571.00. The Cure Notice does not include any breakdown of the proposed cure amount.
7. The Cure Notice provides that pursuant to the Global Bidding Procedures Order (ECF 816) the Debtors commenced an auction on January 14, 2019, and then executed an agreement for the purchase of certain assets dated January 17, 2019.
8. The Cure Notice states that TPL is receiving the Notice because it may be a Counterparty to a Lease of the Debtors that could be assumed and assigned to the successful bidder.
9. The Cure Notice provides that any objection to the proposed Cure Costs must be filed by January 26, 2019 at 4:00pm EST (the “Cure Objection Deadline”). TPL therefore files this timely Cure Objection.

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10. Attached hereto as Exhibit D is a copy of TPL's Statement of Amounts Due dated January 23, 2019, in the total amount of \$283,599.20, with supporting invoices. The amount due consists of rent due for November and December 2017, sewage line emergency repair costs, CAM charges for 2016 and 2017, water bills for August-December 2018 and January 2019, and 2018 real estate taxes, less credit for partial payments made.
11. The Lease also requires Kmart to pay percentage rent, referred to as "Additional Rent." Kmart is required to report its total annual gross sales for the period from June 2018 to May 2019 to TPL and to pay an amount equal to 1% of all annual gross sales in excess of \$22 Million. Payment is due thirty (30) days after the end of the lease year. Exhibit A Part 1 Lease Article 4; Exhibit C Second Amendment ¶ 1. Historically, Kmart's annual gross sales have amounted to approximately \$40 Million. TPL estimates that the total Cure Cost that will be due once gross sales are reported will include additional rent in an amount of \$180,000.00, more or less.
12. Pursuant to 11 U.S.C.A. § 365(b)(1) the Lease may not be assumed unless all defaults, subject to certain exceptions not applicable herein, are cured and all amounts due are paid.
13. In addition to the foregoing, TPL further joins in the objections filed by Debtors' other landlords to the extent that such objections are not inconsistent with the relief requested herein.
14. TPL reserves its rights to make such other and further objections as may be appropriate, including but not limited to, objections regarding adequate assurance of future performance under Section 365.

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Accordingly, TPL respectfully requests that (a) this Cure Objection be considered and resolved in accordance with the terms of the Notice and related orders;(b) that any order authorizing the assumption of the TPL Lease affirmatively require the Debtors to pay all amounts due and all amounts accrued but not yet billed, including attorney's fees and expenses, and (c) grant TPL such further relief as the Court deems appropriate.

Dated: January 25, 2019

Respectfully submitted,

DUDLEY RICH LLP

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CERTITIFICATE OF SERVICE

I hereby certify that on the 25th day of January 2019, I caused a copy of the foregoing to be served by electronic means through the ECF system to all registered ECF participants, as well as by email to the following parties:

1. Bid Notice Parties

a. Debtors

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c. Debtor's Investment Banker

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II. Buyer Parties

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And via First Class Mail to:

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/s/ Carol Ann Rich
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